



Paper No. 5

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.  
1300 19TH STREET, N.W.  
SUITE 600  
WASHINGTON, DC 20036

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**JAN 15 2003**

**OFFICE OF PETITIONS**

In re	:
Charles D. Kownacki, Jeffrey Rehkemper and	:
Ronnen Harary	:
Reissue Application No. 10/026,674	:
Filing Date: <b>October 8, 2002</b>	:
Reissue of Patent No. 6006517	:
Original Issue Date: December 28, 1999	:
Attorney Docket No. 40047A	:
	: DECISION NOTING JOINDER
	: OF INVENTOR AND PETITION
	: UNDER 37 CFR 1.47(a) MOOT

This is in response to the petition under 37 CFR 1.47(a), filed October 8, 2002. This petition is considered in light of the reissue declaration filed November 15, 2002.

On petition under § 1.47, applicants also request that the application be accorded a filing date of December 27, 2001. No basis for correction of the filing date is set forth. **A separate petition with supporting arguments and/or evidence is required to request correction of the filing date. See 37 CFR 1.4.** To facilitate quick resolution of such a filing date petition, applicants may wish to file the petition by facsimile to the attention of the undersigned at 703-308-6916 with a call to the undersigned at the time of transmission to advise her of the forthcoming document.

The petition under § 1.47 is **DISMISSED AS MOOT**.

The above-identified reissue application of patent No. 6,006,517 (Issued December 28, 1999) was filed on October 8, 2002, without a reissue declaration.<sup>1</sup> Charles D. Kownacki, Jeffrey Rehkemper and Ronnen Harary were named as joint inventors. Accordingly, on March 8, 2002, a "Notice to File Missing Parts of Reissue Application" was mailed to applicants, requesting *inter alia* the filing of an oath or declaration.

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<sup>1</sup>37 CFR 1.172 (a) provides that:

A reissue oath must be signed and sworn to or declaration made by the inventor or inventors except as otherwise provided (see §§1.42, 1.43, 1.47), and must be accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent, but a reissue oath may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. All assignees consenting to the reissue must establish their ownership interest in the patent by filing in the reissue application a submission in accordance with the provisions of §3.73(b) of this chapter.

In response, applicants filed the instant petition (and petition fee), asserting that status under § 1.47(a) was proper because inventor Harary was unavailable to join in the application<sup>2</sup>. Accompanying this petition were separate reissue declarations executed by joint inventors Kownacki and Rehkemper on behalf of themselves and on behalf of nonsigning inventor Harary; a written consent of assignee and a certificate under 37 CFR 3.73(b); and a check for \$1,725.00 to cover the filing fee, surcharge, extension of time and additional claim fees due<sup>3</sup>.


Prior to a decision being issued on the petition filed October 8, 2002, on November 15, 2002, applicants filed a reissue declaration executed by previously non-signing inventor Harary.

The declarations filed October 8, 2002 and November 15, 2002, have been reviewed and found in compliance with 37 CFR 1.63.

In view of the joinder of the joint inventor, further consideration under 37 CFR 1.47(a) is not necessary and the petition is considered moot. This application does not have any Rule 1.47(a) status and no such status should appear on the file wrapper. This application need not be returned to this Office for further consideration under 37 CFR 1.47(a).

The application file with a filing date of October 8, 2002 is being forwarded to Technology Center 3748 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.



Nancy Johnson  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>2</sup> A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings and declaration); (2) an acceptable oath or declaration; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Petitioner is advised that the fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47. See MPEP 409.03(b). Such a petition will be dismissed as inappropriate.

<sup>3</sup> Petitioner's Deposit Account No. 18-2220 is being refunded an overpayment of \$35 (and fees paid by check credited in the amounts for a small entity). This fee was assessed because the payments submitted on October 8, 2002 were initially credited in the amounts for a large entity, resulting in a deficiency of \$35 which was charged to the Deposit Account.